

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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|--|---|----------------------|
| In re |) | |
| |) | |
| International Comparison and Consumer |) | GN Docket No. 09-47 |
| Survey Requirements in the Broadband |) | |
| Data Improvement Act |) | |
| |) | |
| A National Broadband Plan for Our |) | GN Docket No. 09-51 |
| Future |) | |
| |) | |
| Inquiry Concerning the Deployment of |) | GN Docket No. 09-137 |
| Advanced Telecommunications Capability |) | |
| to All Americans in a Reasonable and |) | |
| Timely Fashion, and Possible Steps to |) | |
| Accelerate Such Deployment Pursuant to |) | |
| Section 706 of the Telecommunications |) | |
| Act of 1996, as Amended by the |) | |
| Broadband Data Improvement Act |) | |

TO: Honorable Marlene H. Dortch
 Secretary of the Commission

ATTN: The Commission

COMMENTS -- NBP PUBLIC NOTICE # 26

Holston Valley Broadcasting Corporation (Holston), pursuant to "NBP Public Notice #26", released December 2, 2009, DA 09-2518, hereby respectfully submits its Comments in the above-entitled proceedings.

1. Holston is licensee of WKPT-TV, Kingsport, Tennessee, which operates digitally on UHF Channel 27. It is also a licensee of Low Power Television (LPTV), Class A Television, AM

and FM Broadcast Stations located in the Tri-Cities (Bristol-Johnson City-Kingsport), Tennessee-Virginia television designated market area (DMA). WKPT was the first digital TV station to commence operations in Tennessee, in autumn 2000--years before it was required by the FCC to do so. From the outset it was engaged in multicasting with its DT-1 signal being the programming of analog ABC affiliate WKPT-TV and its DT-2 multicast being the programming carried on co-owned Class A analog station WAPK-CA, an affiliate (then of the UPN Network and now) of My Network TV. Initially both services were in standard definition.

2. Two and a third years later the DT-1 channel was converted to high definition ("hi-def") using the 720 line progressive (720P) format, and a DT-3 service in standard definition was commenced. Since DT-3 service began, a number of different program formats have been telecast there; however, for the past 24 months the DT-3 programming has been primarily from the Retro TV Network featuring family-friendly off network programming produced from the 1950's through the 1970's. Locally originated programming fills the schedule Sundays during late afternoon hours including locally-produced public affairs programming, delayed telecasts of area sports events, local parades, musical performances, and the like. This channel is also simulcast in analog form on co-owned WOPI-CA.

3. The current allocation of WKPT-TV's digital bandwidth is 11.5 megabits (Mbit) to the "hi def" DT-1 stream, 4.5 Mbit to

the standard definition DT-2 stream, and 3.0 Mbit to the standard definition DT-3 stream. The station also transmits the audio of three different Holston-owned AM radio stations as auxiliary audio on each of the three video streams. (This practice began immediately upon the inception of WKPT-DT in 2000).

4. Holston plans to commence telecast of the same programming as WKPT-TV's DT-1 (ABC) stream using the new ATSC mobile standard at a future date. It is envisioned that statistical multiplexing will be employed at that time in order to fit all four services and their multiple audio streams into the available bandwidth.

5. Holston is diametrically opposed to any move to take spectrum away from broadcast TV. While the Tri-Cities DMA has a high penetration of cable TV and DBS satellite TV, over 20,000 television households do not subscribe to them¹, relying instead on free, over-the-air television. Many thousands more television homes that subscribe to some form of pay television have multiple TV sets, only one or two of which are connected to cable or satellite.

6. Just this past Friday (December 18, 2009), the Tri-Cities DMA experienced an unusually heavy snowstorm leaving an estimated 170,000 homes without power as well as many thousands without cable TV service. Satellite dishes--many mounted in

¹Source: TVB Market Track, November, 2009; Tri-Cities DMA has 334,620 television households, of which 94.0% have been determined to subscribe to cable, direct broadcast satellite or both.

locations on the viewers' property not readily accessible to the consumer--failed due to the accumulation of snow in the dishes.

7. This recent snowstorm was very minor compared to the kinds of cable and satellite dish interruptions experienced during times of natural disaster such as Hurricanes Hugo or Katrina. In some areas cable service was not restored for years after the event! Only free over the air television was available to serve viewers and bring them timely TV news, weather, and public affairs programming, as well as their favorite form of entertainment.

8. Local television stations such as WKPT-TV have invested large sums of money not only to create terrestrial digital TV service in their local markets, but also to develop the multiple digital streams they transmit--all in response to the promise of the digital TV age and what Holston believed not only its viewers, but also the federal government, encouraged broadcast TV licensees to provide.

9. Each of WKPT-TV's digital streams carries at least the government-mandated amount of children's educational/informational programming each week, and even the WKPT DT-3 stream carries at least three hours of locally-produced programming each week.

10. Holston is not alone in its market when it comes to multicasting. The local CBS affiliate multicasts its local weather channel. The local NBC affiliate multicasts a local CW

affiliate it has created. The local public TV station "triplecasts", adding two additional services to its traditional PBS fare. Combined with WKPT-TV's ABC, MyNetwork TV, and Retro TV network affiliated streams, local Tri-City area viewers thus have twelve (12) different free over the air program streams (including the local Fox affiliate and the local religious station, which have not yet added multiple program services) from which to choose 24 hours a day, seven days a week.

11. Many in Washington seem to believe that it is a simple matter to get TV programming from a station's studio to the head-ends of cable systems and the "local-into-local" collection points of the DBS carriers. In Holston's Tri-Cities, TN/VA, DMA (as defined by Nielsen), there are still some thirty-three (33) cable head-ends in addition to two DBS local station signal collection points. While some of the cable systems are owned by large multiple system operators (MSO's), a number are independently owned by "Mom and Pop" operators or small corporations. An extensive cost prohibitive fiber network would have to be created to get the multiple signals of each local TV station to all of these locations, and in times of bad weather or disaster such a network would be subject to interruption as lines fall due to heavy snow, tornado, or hurricane. Only free broadcast TV can dependably reach even the cable head-ends and DBS collection points--much less individual homes, which either always rely on broadcast TV or turn to broadcast TV when their

multi-channel TV providers are "down" due to natural disaster or other technical difficulty. When all else fails broadcast TV is there.

12. Since analog WKPT-TV began service to its local market as a UHF pioneer in the 1960's, the amount of spectrum allotted to broadcast television by the FCC has been reduced from 486 megahertz (channels 2 through 83, only 81 channels given the fact that channel 37 is reserved for radio astronomy) to 294 megahertz (channels 2 through 51 less channel 37 leaving 49 channels still allocated for TV broadcasting)-a whopping 39.5% reduction! Yet thanks to the entrepreneurship of new commercial broadcasters, newly-created non-profit non-commercial broadcasters, and digital technology, the number of channels of free over the air TV programming available to the American viewing public has multiplied.

13. Further on the spectrum issue, it must be noted that the twelve (12) VHF TV channels (especially "low band VHF" channels 2 through 6) have proven much less suitable for digital TV broadcasting than the UHF TV channels. With (often "Special Temporary") authority from the Commission, a significant number of stations have moved their digital operations from VHF to UHF since the June, 2009, digital transition date. Others still transmitting digitally on VHF have increased their effective radiated power (ERP) output by multiples of up to four or more.

14. Many others have found it necessary to establish UHF digital translators--often operating from the same tower as their main transmissions--in order to reach members of their traditional audience. Although digital UHF translators are supposedly limited to fifteen (15) kilowatts effective radiated power (ERP) the Commission has granted temporary authority in at least one instance for a one hundred (100) kilowatt digital UHF translator. Any proposal for "repacking" TV broadcasting into a smaller spectrum space should take these facts into consideration. Moreover, even where VHF channels have proven somewhat suitable for digital TV broadcasting, the longer wavelengths at VHF compared to UHF and the corresponding need for lengthier, more cumbersome telescoping receiving antennas make VHF even less palatable for the emerging mobile digital TV phenomenon.

15. If VHF channels are effectively eliminated from the mix, television broadcasting has lost not 32, but 44 of the 81 channels with which it emerged from the 1948-1952 TV "freeze", which the Commission imposed in order to find more spectrum for broadcast television. That's more than 54% of the 81 channels allocated in 1952.

16. Finally with respect to the amount of spectrum allocated going forward to TV broadcasting, the fact that a pending proposal advocated by a number of reputable consulting broadcast engineers and many radio broadcasting interests favors

reallocation of VHF TV channels 5 and 6 to FM and/or digital radio broadcasting must be considered. If only those two channels are taken away from broadcast television and the other VHF channels (even low band channels 2, 3, and 4) are considered viable for digital TV broadcasting, 42% of TV broadcast spectrum will have been reallocated to other services.

17. While the government may initially mandate "must carry" on cable and satellite for existing TV broadcasters, proposals to eliminate or reduce the scope of free over the air broadcasting--if implemented--would be the beginning of the end of a service, which is the most extensive TV broadcast system in the world.

18. On the subject of "must carry," as the licensee of LPTV and Class A TV stations as well as its one "full power" television station, WKPT-TV, Holston wonders what will happen to the thousands of LPTV and Class A stations, most of which do not currently enjoy "must carry" status on any multi-channel provider platform should broadcast TV lose its spectrum.

19. The economic side of this proposition is a vital consideration for the industry. As the playing field has changed, and networks have drastically reduced or eliminated monetary compensation to their affiliates, stations have turned to bargaining with multi-channel providers for retransmission consent fees to help make up for the loss of that network compensation, dollars necessary to their efforts to telecast the local news, weather, public affairs, and public service

programming and announcements, which broadcast television has always provided to local communities. Without the over the air broadcast component on which their businesses have been built, the "retrans" bargaining strength broadcasters have used to help procure the funding to provide these various public services will quickly erode.

20. The FCC, the U.S. military, and the National Telecommunications and Information Administration (NTIA) hold sway over thousands of megahertz of spectrum. The recent, sudden, and widely-publicized proposals to reduce or eliminate free over the air TV broadcasting in the United States, its overseas territories, and the Commonwealth of Puerto Rico, is unprecedented and a terribly disturbing threat to the rights assured by First Amendment to the U.S. Constitution.

21. For example, the relatively tiny amount of time given for the filing of Comments in this proceeding during the Holiday season of the worst economic year since the Great Depression—near the end of a decade during which broadcasters and the American public have invested many, many billions of dollars on the government-mandated transition to digital TV—smacks of an effort to "steamroll" over and bury an industry, which has an illustrious history of service to the American public. Finally, the Commission's recent hiring as a special consultant of law professor Stuart Minor Benjamin, who proposes in his Duke law review paper *Roasting the Pig to Burn Down the House: A Modest*

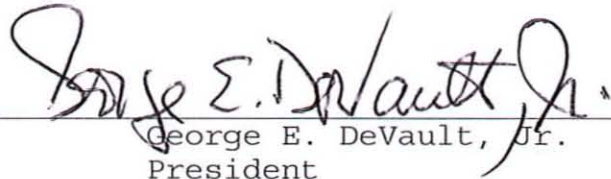
Proposal (Duke Public Law & Legal Theory Research Paper Series No. 251, May, 2009) that all of TV broadcasting's spectrum be taken away "by hook or crook" signals that a dangerous prejudice against TV broadcasting may exist at least among some Commissioners.

22. To conclude, the Commission must slow down. Before more spectrum is withdrawn from over-the-air free television broadcasting, the future of thousands of megahertz of spectrum allotted to other services (including spectrum reserved by the government for itself) must be equally scrutinized.

Respectfully submitted,

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DATED AND FILED: December 22, 2009²

²The original due date for these comments was Monday, December 21, 2009; however, the FCC's Washington offices, including its Office of the Secretary, were closed on December 21 due to adverse weather conditions, and are now scheduled to reopen on Tuesday, December 22, 2009. Pursuant to 47 C.F.R. §1.4(e) (1-2), the new due date for these Comments is December 22, 2009.